

**BEFORE THE  
NATURAL RESOURCES COMMISSION  
OF THE  
STATE OF INDIANA**

<b>IN THE MATTER OF:</b>	)	
	)	
<b>READOPTION OF 312 IAC 19</b>	)	<b>Administrative Cause</b>
<b>GOVERNING RESEARCH,</b>	)	<b>Number: 10-005N</b>
<b>COLLECTION, QUOTAS, AND</b>	)	
<b>SALES OF PLANTS</b>	)	<b>(LSA Document #10-60(F))</b>

**RECOMMENDATION FOR FINAL ACTION ON READOPTION OF RULE**

**A. INTRODUCTION**

For consideration is the readoption of 312 IAC 19 governing research, collection, quotas, and sales of plants. This article includes 312 IAC 19-1, which provides standards for licensure, selling, and harvest quotas of ginseng. The text of 312 IAC 19 can be accessed through the Legislative Services Agency Internet site at:

<http://www.in.gov/legislative/iac/T03120/A00190.PDF>.

In April 2002, the Natural Resources Commission approved delegations of authority with respect to readoptions. Where the rules are being readopted in their current form without amendments the Director of the Division of Hearings may approve preliminary action. However, the Commission retained authority to take final action on recodifications.

The rules codified under 312 IAC 19 are proposed for readoption without amendment. The Director of the Division of Hearings approved preliminary action on January 4, 2010. It is the standard practice to readopt rules by article, and 312 IAC 19 is now submitted for consideration as to final action.

**B. READOPTION ANALYSIS REQUIRED UNDER IND. CODE § 4-22-2.5-3.1**

On January 14, 2010, John Bacone, Director of the Department's Division of Nature Preserves, appointed Cary Floyd, Project Coordinator, as the Small Business Regulatory

Coordinator for this rule readoption. Floyd provided the following analyses of potential impacts to small business for the proposed readoption of 312 IAC 19:

**SMALL BUSINESS IMPACT ANALYSIS  
READOPTON OF 312 IAC 19**

**The continued need for the rule.**

312 IAC 19 records the harvest and regulates the export of American ginseng (Panax quinquefolius) from the State of Indiana. American ginseng is listed in Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Under CITES, the Division of Scientific Authority (DSA) of the U. S. Fish and Wildlife Service must determine whether the export of American ginseng is detrimental to the survival of the species (CITES 1973). DSA uses data and recommendations from the various states to make science based determinations annually. This rule provides for the regulation of the harvest to gather data to supply to the DSA, allowing for the continued trade of ginseng harvested in Indiana.

**The nature of any complaints or comments received from the public, including small businesses, concerning the rule or the rule's implementation by the agency.**

Notice for public comments resulted in no comments. As a division we receive 1-5 calls weekly regarding the topic of the ginseng trade. The vast majority are inquiries about becoming a licensed dealer or finding a licensed dealer.

We have received several unsolicited comments from dealers that there has been a return to ginseng as a source of supplemental income for many harvesters this season. Each dealer attributed this resurgence to the economic downturn and the many harvesters who had lost jobs. They cite this as evidence of the program's importance.

**The complexity of the rule, including any difficulties encountered by: (A) the agency in administering the rule; or (B) small businesses in complying with the rule.**

As an agency we have no difficulty administering the rule, nor have we public comments indicating the rule is too complex for dealers to be in compliance.

**The extent to which the rule overlaps, duplicates, or conflicts with other federal, state, or local laws, rules, regulations, or ordinances.**

The rule does not overlap, duplicate, or conflict with other federal, state or local laws, rules, regulations, or ordinances.

**The length of time since the rule was last reviewed under this section or otherwise evaluated by the agency, and the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule since that time.**

These rules were recodified in 2004, and review under this section was not required. However, in the process of conducting its business, the Division of Nature Preserves is continually reviewing its effectiveness in providing standards and guidance to small businesses, private individuals, and professionals in complying with its rules. Technology, economic conditions, and other factors have not changed in a way that would warrant a modification to 312 IAC 19.

### **C. NOTICE OF INTENT TO READOPT AND RECOMMENDATION FOR FINAL ACTION**

On February 3, 2010, a “Notice of Intent to Readopt” 312 IAC 19 was posted to the *Indiana Register* at 20100203-IR-312100060RNA as anticipated by Ind. Code § 4-22-2.5-2 and Ind. Code § 4-22-2.5-4. The notice indicated the intention to readopt the entirety of 312 IAC 19 without changes. The notice also provided that a person had 30 days to submit a written request to the Natural Resources Commission, through the Small Business Regulatory Coordinator, seeking to have a particular section of the rule readopted separately. If such a request had been made, the Commission would have been required to complete the full rule adoption process for the section requested to be readopted separately.

In this instance, no written request has been received. The Commission may either submit the rule for filing with the Publisher under Ind. Code § 4-22-2-35 or elect the procedure for readoption under Ind. Code § 4-22-2. It is recommended that the Commission approve for readoption 312 IAC 19, without amendment as attached in Exhibit “A” for subsequent filing with the Publisher.

Dated: April 7, 2010

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Jennifer M. Kane  
Hearing Officer

## **EXHIBIT A**

### **ARTICLE 19. RESEARCH, COLLECTION, QUOTAS, AND SALES OF PLANTS**

#### **Rule 1. Ginseng**

##### **312 IAC 19-1-1 Definitions**

Authority: IC 14-31-3-14

Affected: IC 14-31-3

Sec. 1. The following definitions are in addition to those contained in 312 IAC 1 and apply throughout this rule:

- (1) "Buy" includes offer to buy, trade, or barter.
- (2) "Collect" means dig, pick, pull up, cut, uproot, harvest, or otherwise remove a ginseng plant from its habitat.
- (3) "Cultivated ginseng" means ginseng that is planted and cultivated according to standard ginseng cultivation practices.
- (4) "Division" means the division of nature preserves of the department.
- (5) "Export" means transport, ship, carry, haul, take, or otherwise move ginseng collected in Indiana outside the state of Indiana.
- (6) "Ginseng" means American ginseng (*Panax quinquefolius* L.). The term does not include ginseng ready for consumption, sold, or bought at retail. The term includes cultivated ginseng and wild ginseng.
- (7) "Ginseng dealer" means a person who buys ginseng roots from a ginseng harvester or another ginseng dealer for resale or exportation. The term does not include a person who sells solely for domestic consumption.
- (8) "Ginseng harvester" means a person who collects ginseng.
- (9) "Harvest season" means September 1 through December 31 of each year.
- (10) "License year" means September 1 of one (1) year through August 31 of the following year.
- (11) "Sale" includes trade, barter, and an offer to sell, trade, or barter.
- (12) "Selling season" means September 1 of one (1) year through March 31 of the following year.
- (13) "Wild ginseng" means ginseng in, or harvested from, its native habitat. The term applies regardless of whether the ginseng occurs naturally in the habitat or was introduced or increased in abundance by sowing ginseng seeds or by transplanting ginseng plants from another area.

*(Natural Resources Commission; 312 IAC 19-1-1; filed Jul 10, 1998, 10:29 a.m.: 21 IR 4193; filed Oct 1, 1999, 1:05 p.m.: 23 IR 297; readopted filed Nov 17, 2004, 11:00 a.m.: 28 IR 1315)*

##### **312 IAC 19-1-2 Dealer's license; annual issuance**

Authority: IC 14-31-3-14

Affected: IC 14-31-3

Sec. 2. Licenses to purchase ginseng are issued annually to ginseng dealers for the period from September 1 of one (1) year through August 31 of the following year. *(Natural Resources Commission; 312 IAC 19-1-2; filed Jul 10, 1998, 10:29 a.m.: 21 IR 4193; readopted filed Nov 17, 2004, 11:00 a.m.: 28 IR 1315)*

##### **312 IAC 19-1-3 Application for license; fee**

Authority: IC 14-31-3-14

Affected: IC 14-31-3

Sec. 3. As prerequisites to the issuance of a ginseng dealer's license, a person must file with the division both of the following:

- (1) A completed application for ginseng dealer's license.
- (2) A fee payable to the department in the amount of one hundred dollars (\$100).

*(Natural Resources Commission; 312 IAC 19-1-3; filed Jul 10, 1998, 10:29 a.m.: 21 IR 4193; filed May 11, 2004, 9:00 a.m.: 27IR 3065; readopted filed Nov 17, 2004, 11:00 a.m.: 28 IR 1315)*

**312 IAC 19-1-4 Selling season; retention by ginseng dealer**

Authority: IC 14-31-3-14

Affected: IC 14-31-3-10

Sec. 4. (a) A person must not buy or sell ginseng except during the selling season.

(b) Notwithstanding subsection (a), a ginseng dealer may retain for resale ginseng lawfully acquired during the ginseng season if the dealer has certified the ginseng under section 5 of this rule. (*Natural Resources Commission; 312 IAC 19-1-4; filed Jul 10, 1998, 10:29 a.m.: 21 IR 4194; readopted filed Nov 17, 2004, 11:00 a.m.: 28 IR 1315*)

**312 IAC 19-1-5 Certification of shipments**

Authority: IC 14-31-3-14

Affected: IC 14-31-3

Sec. 5. (a) A dealer must receive a certification from the department under this section in order to ship ginseng to any of the following:

- (1) Another ginseng dealer.
- (2) A ginseng exporter.
- (3) Directly for export.

(b) A dealer must complete in triplicate and deliver to the department a certificate of ginseng shipment for ginseng purchased from diggers. The department shall examine the certificate and the shipment and, if approved, sign and date the certificate. The department shall retain one (1) copy of the certificate, one (1) copy shall accompany the ginseng shipment, and one (1) copy shall be returned to the ginseng dealer.

(c) A dealer must obtain a certification the first time ginseng is shipped under subsection (a) and not again. (*Natural Resources Commission; 312 IAC 19-1-5; filed Jul 10, 1998, 10:29 a.m.: 21 IR 4194; readopted filed Nov 17, 2004, 11:00 a.m.: 28 IR 1315*)

**312 IAC 19-1-6 Annual summary reports**

Authority: IC 14-31-3-14

Affected: IC 14-31-3-9

Sec. 6. Within thirty (30) days of the last day of the selling season, a ginseng dealer must file a completed ginseng dealer's annual summary report listing all ginseng bought or sold during the preceding year. The listing shall include ginseng bought outside Indiana and must indicate the state where the ginseng was purchased. (*Natural Resources Commission; 312 IAC 19-1-6; filed Jul 10, 1998, 10:29 a.m.: 21 IR 4194; readopted filed Nov 17, 2004, 11:00 a.m.: 28 IR 1315*)

**312 IAC 19-1-7 Records; maintenance and inspection**

Authority: IC 14-31-3-14

Affected: IC 14-31-3

Sec. 7. (a) A ginseng dealer must do both of the following:

- (1) Maintain true and complete records of the dealer's commerce in ginseng.
- (2) Provide a report, completed on a departmental form, for each quarter of the calendar year.

(b) The records required in subsection (a) must include a log that includes the following information, written legibly, on a departmental form:

- (1) The name and address of each person who bought ginseng from the dealer or sold ginseng to the dealer.
- (2) The weight of wild ginseng and cultivated ginseng bought or sold.
- (3) The number and date of shipments and the county or counties from which the ginseng was taken.

(c) The department may, at any reasonable time, inspect the following:

- (1) Records required under this section.
- (2) A dealer's business premises.

(*Natural Resources Commission; 312 IAC 19-1-7; filed Jul 10, 1998, 10:29 a.m.: 21 IR 4194; readopted filed Nov 17, 2004, 11:00 a.m.: 28 IR 1315*)

**312 IAC 19-1-8 Harvesting quota**

Authority: IC 14-31-3-14

Affected: IC 14-31-3

Sec. 8. A person must not harvest or possess harvested wild ginseng unless the ginseng plant is harvested under the conditions of the quota established as follows:

(1) Each individual ginseng plant must demonstrate at least one (1) of the following:

(A) At least three (3) prongs and a flowering or fruiting stalk. Except as provided in subdivision (2), the entire stalk and leaves must be retained with the plant until the plant is taken to the ginseng harvester's residence or place of business. As used in this clause, "prong" means a true compound leaf, including five (5) leaflets (three (3) large leaflets and two (2) small leaflets).

(B) At least four (4) internodes on the rhizome. As used in this clause, "internode" refers to a section containing a stem scar.

(2) Mature fruits and any seeds from a harvested plant must be planted in the vicinity where the plant was taken in a manner that encourages the germination and growth of new plants.

(3) Mature fruits and seeds must not be sold or removed from the vicinity where the plant was taken except under a license issued by the division under this subdivision.

*(Natural Resources Commission; 312 IAC 19-1-8; filed Jul 10, 1998, 10:29 a.m.: 21 IR 4194; filed Oct 1, 1999, 1:05 p.m.: 23 IR 297; readopted filed Nov 17, 2004, 11:00 a.m.: 28 IR 1315)*

**312 IAC 19-1-9 False representations**

Authority: IC 14-31-3-14

Affected: IC 14-31-3

Sec. 9. (a) A ginseng dealer must not represent, in a report, log, certificate, or other document required or maintained under this rule, that a substance is ginseng if the dealer knows or should know that all or a portion of the substance is other than ginseng.

(b) A ginseng dealer must not knowingly include a false or incorrect statement in a document, log, or record required under this rule. *(Natural Resources Commission; 312 IAC 19-1-9; filed Jul 10, 1998, 10:29 a.m.: 21 IR 4195; readopted filed Nov 17, 2004, 11:00 a.m.: 28 IR 1315)*

**312 IAC 19-1-10 Sanctions**

Authority: IC 14-31-3-14

Affected: IC 4-21.5-3; IC 14-10-2-6; IC 14-31-3

Sec. 10. The department may seek the sanctions described in this section for a violation of IC 14-31-3, this rule, or a license issued under IC 14-31-3 and this rule:

(1) A license suspension or revocation following a completed proceeding with the commission under IC 4-21.5-3 and 312 IAC 3-1. A revocation issued under this subdivision may order that a new license not be issued for a period not longer than five (5) years.

(2) The issuance of a notice of violation under IC 14-10-2-6 against a ginseng dealer or a ginseng harvester.

(3) Any other remedy provided by law.

*(Natural Resources Commission; 312 IAC 19-1-10; filed Jul 10, 1998, 10:29 a.m.: 21 IR 4195; readopted filed Nov 17, 2004, 11:00 a.m.: 28 IR 1315)*

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